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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Criminal Case No. 07-CR-2852-JAH
11)
12 Plaintiff,)
13 v.)
14 JAMES FOLSOM) GOVERNMENT'S MOTION FOR
15) HANDWRITING EXEMPLARS
16 Defendants.) Date: April 7, 2008
Time: 8:30 a.m.

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18 COMES NOW the United States of America, by and through its attorneys, Karen P. Hewitt,
19 United States Attorney, and Melanie K. Pierson, Assistant U.S. Attorney, and hereby files its Motion
20 for Handwriting Exemplars, together with attached Statement of Facts and Memorandum of Points and
21 Authorities.

22 I

23 STATEMENT OF FACTS

24 At issue in this case are numerous transactions, conducted in the name of "Jim Anderson". The
25 government is in possession of checks deposited to the defendant's bank account, endorsed by "Jim
26 Anderson", as well as handwritten ledgers and other documents. The Government seeks to prove,
27 through a handwriting expert, that defendant Jim Folsom's handwriting appears on the various checks
28 and other documents, as Jim Anderson, and as the writer of other incriminating documents. Defense

1 counsel has advised that the case will likely proceed to trial, making such expert testimony immediately
2 relevant.

3 II.

4 POINTS AND AUTHORITIES

5 The Fifth Amendment privilege against self incrimination protects a defendant against the
6 compelled production of testimonial or communicative evidence, rather than evidence of a real or
7 physical nature. Schmerber v. California, 384 U.S. 757 (1966). Handwriting is an identifying physical
8 characteristic, so requiring a defendant to provide a handwriting exemplar does not violate the
9 constitutional guarantee against self-incrimination. Gilbert v. California, 388 U.S. 263 (1967).

10 A mere handwriting exemplar, in contrast to the content of what is written, like the voice or body
11 itself, is an identifying physical characteristic outside the protection of the Fifth Amendment. United
12 States v. Pheaster, 544 F.2d 353, 373 (9th Cir. 1976). In Pheaster, the agent dictated the words to the
13 defendant to write for the exemplar, and the defendant made the same unusual spelling mistakes as
14 found in the kidnapper's note. The defendant claimed that the misspelling were testimonial in nature,
15 rather than a physical characteristic, but the Ninth Circuit disagreed. The Court noted that spelling, like
16 penmanship, is acquired by learning and the manner of spelling a word is no less an identifying
17 characteristic than the manner of crossing a "t" or looping an "o". Id. Handprinting, like handwriting,
18 is within the rule of Gilbert. United States v. Rudy, 429 F.2d 993, 994 (9th Cir. 1970). So long as the
19 specific phrases used in the exemplar are to serve as examples of handwriting, and not as testimonial
20 expressions of the truth of those phrases, the exemplar does not constitute a violation of the privilege
21 against self-incrimination under the Fifth Amendment. United States v. Antill, 579 F.2d 1135 (9th Cir.
22 1978).

23 In the instant case, there is a limited amount of writing and printing which the Government seeks
24 to compare with the handwriting of defendants. None of it could be construed as testimonial in nature,
25 and therefore none would be protected under the Fifth Amendment.

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III.

CONCLUSION

On the basis of the foregoing, the Government respectfully requests that its Motion for Handwriting Exemplars be granted.

DATED: March 7, 2006

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

MELANIE K. PIERSON
Assistant U.S. Attorney